mentioned in the telephone conversations was in respect of the same heroin.

In addition to the case of *Mobarik Ali Ahmad* the applicant also cited the case of *PP v. Loh Ah Soo* [1974] 2 MLJ 216; *Lee Szu Yui* [1962] MLJ 49 and *PP v. Yong Nam Song* [1964] MLJ 85 to support his contention. In my view in those cases/ there were clear evidence to show that the Accused persons in those cases were the people who had signed the declaration forms which were used to commit the offences. Thus those cases could be easily distinguished from the present case. The applicant also referred to the case of *PP v. Khoo Ban Hock & Ors.* [1988] 2 MLJ 217. I agree with the learned defence Counsel for the respondent that the facts stated in that case were insufficient in order for me to make any ruling that the principle in that case could be applied in the present case.

The question whether the offence is extra-territorial or otherwise had been discussed at great length in the case of *PP v. Rajappan* [1986] 1 MLJ 152. This was a decision of the Supreme Court consisting of five judges which appears to me a very strong panel. The accused in that case was charged for bigamy when he married another woman in India when the first marriage was still subsisting. The accused then brought the wife of the second marriage to Malaysia and lived with her. It appears that the bigamous marriage continued in Malaysia. The Supreme Court held that the Court in Malaysia had no jurisdiction to try the Accused since the second marriage took place outside Malaysia.

For the above reasons I agree that the learned Sessions Court Judge was correct in holding that the offences were extra-territorial in nature. She had come to the correct conclusion.

The case of *PP v. Rajappan* also dealt at great length with the second question posed by the applicant. There is no necessity for me to repeat them. It is sufficient for me to say the learned Sessions Court Judge had applied the principles correctly in the present case. I agree with the conclusion made by the learned Sessions Court Judge. Her decision in respect of this is hereby confirmed and she was right in her decision in refusing to order the extradition of the respondent.

I therefore dismissed the application by the applicant.

PUBLIC PROSECUTOR

v.

SAW AH KOW

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK B.
HJ. ISHAK JC.
[CRIMINAL TRIAL NO. 58-2-92 (88)
23 JANUARY 1993

DANGEROUS DRUGS: Trafficking in dangerous drugs, to wit, cannabis - Section 39(1)(a) Dangerous Drugs Act 1952 - Drugs found in kitchen of house - Accused is owner of house - Three other individuals were in kitchen at the time of raid by police officers - No evidence adduced by prosecution whether the 3 individuals were visitors, occupants or tenants of house - All the 3 individuals and accused were arrested and brought to police station - Search list signed by accused and 3 individuals - Owner of house was charged for trafficking but no evidence adduced as to whereabouts of other 3 individuals - At end of prosecution case 3 individuals who were absent offered to defence - Whether the 3 individuals were material witnesses for prosecution.

EVIDENCE: Scope of s. 114(g) of Evidence Act 1950 - Whether withholding of material document or suppression of evidence - Non-production of not just any witness but important and material witness - No reasonable explanation given for failure to produce the 3 individuals - Whether reasonable to draw adverse inference and invoke s. 114(g) Evidence Act 1950 against prosecution.

EXHIBITS: Movement of exhibits while it was with chemistry department - Whether prosecution must show positively that appropriate steps taken by government chemist to ensure safe custody - Identity of drugs produced in Court - Whether serious break in chain of evidence - Vital evidence to link accused with drugs - Whether fingernail clippings or hand swabs or fingerprint taken from accused - Inference favourable to accused to be drawn from a set of facts available to Court.

EXPERT: Investigation Officer attended Hokkien language course at INTAN - Whether having attended Hokkien language course at INTAN qualifies the Investigation Officer as an expert in linguistics especially Hokkien language.

The Accused, an owner of a house was charged with trafficking in dangerous drugs, to wit, cannabis weighing 1052.06 grammes on 26 July 1988 at about 7.45 p.m., an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and punishable under s. 39B(2) of the same Act.

Held:

[1] As the prosecution had failed to prove a *prima facie* case against the accused principally on the existence of reasonable doubt cast during the prosecution case itself, the Accused was acquitted and discharged without calling on him to enter his defence.

[2] In the instant case very likely one or the other persons present in the said house or all of them must have committed the offence, but there was no evidence to this effect. Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and that the law must be maintained that the prosecution should prove its case beyond reasonable doubt.

[Accused acquitted and discharged without calling for his defence]

Cases referred to:

PP v. Chin Yoke [1940] MLJ Rep 37 ***(refd)***
Zahari bin Yeop Baai & Anor. v. PP [1980] 1 MLJ 160 ***(refd)***
Munusamy v. PP [1987] 1 MLJ 492 SC / [1987] 1 CLJ 250 ***(refd)***
Seneviratne v. R [1936] 3 All ER 35 ***(refd)***
Abdullah Zawawi v. Public Prosecutor [1985] 2 MLJ 15 SC / [1985] 2 CLJ 2 ***(foll)***
Public Prosecutor v. Lee Pak [1937] MLJ 265 ***(refd)***
Daniel v. Public Prosecutor [1956] MLJ 186 ***(refd)***
Mohamed Kassim v. R [1956] MLJ 212 ***(refd)***
A. Gabriel & Anor v. Public Prosecutor [1957] MLJ 83 ***(refd)***
Khoon Chye Hin v. Public Prosecutor [1961] MLJ 105 CA ***(refd)***
Samsudin v. Public Prosecutor [1962] MLJ 405 ***(refd)***
Tan Puan Chee v. PP[1981] 2 MLJ 282 ***(refd)***
Murugan v. Lew Chu Cheong [1980] 2 MLJ 139 ***(refd)***
Abdul Jalil bin Abdul Satar v. PP [1991] 2 MLJ 194 SC / [1991] 2 CLJ 1089 ***(foll)***
Teoh Hoe Chye v. Public Prosecutor [1987] 1 MLJ 220 SC / [1987] 1 CLJ 471 ***(foll)***
Mohd Osman bin Pawan v. Public Prosecutor [1989] 2 MLJ 110 / [1989] 2 CLJ 388 ***(foll)***
Abdullah bin Yaacob lwn. Pendakwa Raya [1991] 2 MLJ 235 / [1991] 2 CLJ 853 ***(foll)***
Shamsuddin bin Hassan & Anor v. PP [1991] 3 MLJ 314 / [1991] 3 CLJ 2414 ***(foll)***
Public Prosecutor v. Lim Eng Chye [1978] 1 MLJ 200 ***(refd)***
PP v. Kang Choo Heng & Anor [1991] 3 CLJ 2574 ***(refd)***
PP v. Forster Frank Edald Heinrich [1988] 2 MLJ 594 / [1987] 2 CLJ 177 ***(refd)***
PP v. Lim Ah Bek (f) [1989] 2 CLJ 1090 ***(refd)***
PP v. Lee Soon Sian [1993] 2 CLJ at p. ***(refd)***
Tai Chai Keh v. PP [1948-49] MLJ Supp 105 ***(refd)***
PP v. Tay Bee Seng[1993] 1 CLJ 526 ***(refd)***

Legislation referred to:

Evidence Act 1950 s. 114, 114(g)
Dangerous Drugs Act 1952 (Act 234), ss. 2, 39B(1)(a), 39(2)

For the Accused - Seelan
For the Public Prosecutor - Sapini Mat Saman

JUDGMENT

Hj. Abdul Malik b. Hj. Ishak JC:

The Accused was charged with trafficking in dangerous drugs, to wit, cannabis weighing 1052.06 grammes at about 7.45 p.m. on 26 July 1988 at house number 781, Jalan Templer, Pokok Assam, in the district of Larut and Matang, Perak, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and punishable under s. 39B(2) of the same Act.

The facts of the case are that on 26 July 1988 at about 7.45 p.m. acting on information received, Inspector Syed Talib bin Syed Abu Bakar (PW4) led his police personnel (in civilian clothes) comprising of Corporal 51903 Mohd. Azmi Embi (PW7), Constable 96706 Kumar, Constable 114454 Che Hamizan bin Bakar, Constable 111429 Mansor bin Mahmud, Constable 85100 Zainudin Shaari and Constable 84269 Jamaludin bin Mohd. Ali (driver) and raided house number 781, Jalan Templer, Pokok Assam, Taiping , Perak (the said house). As planned Inspector Syed Talib together with Corporal Azmi and Constable Kumar entered the said house through the front door whilst Constables Hamizan and Mansor were deployed to guard the rear portion of the said house. Constable Zainudin was assigned to guard the front portion of the said house.

It was in evidence that Inspector Syed Talib, Corporal Azmi and Constable Kumar easily gained entrance to the said house. The grille and the front door of the said house as in photograph P6A were unlocked and though "Q" as in sketch plan (P9), Inspector Syed Talib and two of his police personnel proceeded straight to the kitchen portion at "G" as in sketch plan (P9).

In the kitchen portion of the said house Inspector Syed Talib and the two police personnel found four chinese individuals (two males and two females) talking among themselves. Naturally the four chinese individuals were shocked and surprised at seeing the sudden appearance of Inspector Syed Talib and the two police personnel.

Inspector Syed Talib duly introduced his office and warned the four chinese individuals, *inter alia*, not to move and asked: Siapa tuan rumah? At this juncture, the Accused admitted being the owner of the said house. Incidentally there was sufficient evidence adduced to show that the Accused was the owner of the said house at the material time. The Accused was then asked for his NRIC card but he was unable to produce it. Thereafter Inspector Syed Talib took the Accused to examine firstly, the whole house in order to ascertain whether there were other occupants in the said house and secondly, the room occupied by the Accused at 'D' in sketch plan (P9) in order to ascertain whether there were anything incriminating inside it. These examinations proved negative. During this time, the three other chinese individuals were guarded by Corporal Azmi and Constable Kumar.

In the kitchen portion, Inspector Syed Talib conducted an examination in the presence of the Accused and the other three chinese individuals. Corporal Azmi and Constable Kumar were also present.

In the cupboard especially at the bottom portion at "Y" in photographs P6F and P6G Inspector Syed Talib found two packages wrapped with chinese newspapers (exhibits P18 and P19) and upon opening them found dried leaves (in loose forms) believed to be cannabis (exhibits P18A and P19A). This discovery prompted Inspector Syed Talib to direct Corporal Azmi to handcuff the Accused and at the same time directed Constable Zainudin who stood guard outside the said house to enter and assist Corporal Azmi and Constable Kumar to guard the Accused and the three other chinese individuals.

Inspector Syed Talib proceeded further to examine and found on top of the cupboard a black plastic bag (exhibit P20) containing a steamer comprising of (a) a cover (P21) and (b) three bowls (exhibits P21A, P22 and P23) (and photograph P6H). Upon opening all the three bowls, Inspector Syed Talib counted and found 1,700 rolls in 34 bundles containing dried leaves suspected to be cannabis (exhibits P21C, P22B, P23B, P21D, P22C and P23C) and photographs P6I, P6J, P6K, P6L, P6M, P6N and P6O.

In due course the Government Chemist (PW2) analsyed and confirmed the dried leaves to be 1052.06 grammes of cannabis as defined under section 2 of the Dangerous Drugs Act 1952 and constituted the subject matter of the charge.

According to Inspector Syed Talib, the 3 other chinese individuals were Saw Chin Huat (male), Saw Kim Heoh (female) and Ooi Eng Har (f). All of them including the Accused were placed under arrest and brought to Taiping police station where Pokok Assam report number 1161-1162/88 (exhibit P24) was lodged by Inspector Syed Talib. A search list (exhibit P3) was also prepared by Inspector Syed Talib and was signed by the Accused and the three chinese individuals.

At the close of the case for the prosecution, I held that the prosecution had failed to establish a *prima facie* case against the Accused which, if unrebutted, would warrant his conviction (see *PP v. Chin Yoke* [1940] MLJ Rep 37, *Zahari bin Yeop Baai & Anor. v. PP* [1980] 1 MLJ 160 and *Munusamy v. PP* [1987] 1 MLJ 492 SC). Accordingly, I acquitted and discharged the Accused without calling on him to enter his defence.

I was satisfied that the prosecution had failed to prove a *prima facie* case principally on the existence of reasonable doubt cast during the prosecution case itself.

It is trite law that the requirements of strict proof in a criminal case cannot be relaxed at all to bridge any material gap in the prosecution evidence. The decision of the court must be based on the evidence adduced and nothing else.

There are inherent defects in the prosecution's case.

Firstly, in relation to the other three chinese individuals arrested together with the Accused at the kitchen portion of the said house not a jot of evidence was led by the prosecution in regard to their respective roles apart from the fact that they were found talking among themselves (here the Accused was seen conversing with them). There was no evidence as to whether these three chinese individuals were visitors, occupants or tenants of the said house. There was also no evidence as to whether their personal effects were found in the said house. It must be borne in mind that Inspector Syed Talib and Corporal Azmi examined all the rooms in the said house and if they stumbled across the personal effects of these three chinese individuals they would have certainly mentioned it.

In the course of the trial the prosecution was focussing its attention principally on the Accused forgetting entirely about the presence of these three chinese individuals.

Secondly, there was no evidence led by the prosecution as to whether the three chinese individuals were charged together with the Accused in the subordinate courts or were released forthwith as Crown witnesses after they were arrested and brought to Taiping police station. No evidence was led as to whether statements were recorded from the three chinese individuals. However, there was evidence that their names were: Saw Chin Huat (male) (see exhibit P4A), Saw Kim Heoh (female) (see exhibit P4B) and Ooi Eng Har (female) being the wife of Saw Chin Huat (male). Inspector Syed Talib, Corporal Azmi and Chief Inspector Shaharani Yahya (PW1) identified them from the photographs in exhibits P4A, P4B and ID5 (incidentally this document has not been marked as prosecution exhibit). Clearly these three chinese individuals are material witnesses for the prosecution.

Thirdly, in order to circumvent the provision of s. 114(g) of the Evidence Act the prosecution introduced evidence through the investigating officer (Chief Inspector Shaharani Yahaya) that the three chinese individuals resided in Cheras, Kuala Lumpur and that *subpoenas* commanding their presence in court could not be effected. Further, according to Chief Inspector Shaharani the assistance of Cawangan Anti Dadah in Cheras was sought but they were unable to trace their addresses in Cheras. Next, Chief Inspector Shaharani requested the Timbalan Ketua Jabatan Siasatan Jenayah (T.K.J.S.J) of the Cawangan Anti Dadah in Perak to advertise in a daily chinese newspaper known as Nanyang Siang Pau on 9 January 1993 imploring their presence in court as principal witnesses in a trial scheduled on 18 till 26 January 1993 (see exhibit P2).

A check on exhibit P2 reveals the following unsatisfactory features, *viz*.

(a) It contains two photographs of the faces of Saw Chin Huat (male) (exhibit P4A) and Saw Kim Heoh (female) (exhibit P4B).
(b) It does not incorporate the photograph of Ooi Eng Har (female) because she's underaged (according to Chief Inspector Shaharani).
(c) The translation in Malay gives the names of Sow Kam Fatt and Sow Kam Hong. There was no evidence led by the prosecution as to the maker of the translation. Why was there a mistake in the names in exhibit (P2)? Should exhibit P2 bear the names of Saw Chin Huat and Saw Kim Heoh?

Chief Inspector Shaharani who claimed to have attended a Hokkien language course at INTAN sought to justify the error in exhibit (P2) by stating that the chinese daily in question could have printed the "slang of their names". But alas, there was no evidence that Chief Inspector Shaharani was an expert in linguistic especially Hokkien language. Having attended Hokkien language course at INTAN does not necessarily qualify him as an expert *per se*. Rightly the prosecution should have called the Timbalan Ketua Jabatan Siasatan Jenayah of the Cawangan Anti Dadah in Perak, the editor of Nanyang Siang Pau and the person who translated exhibit P2 to explain the errors adumbrated earlier. The failure to call these personalities would relegate exhibit P2 to just being a mere piece of paper. Further it would also mean that the prosecution has failed to satisfactorily account for the absence of these three chinese individuals. As for Ooi Eng Har (female), the prosecution failed to satisfactorily account for the failure to advertise her particulars in exhibit P2 save that she was underaged. The Court can only note that Ooi Eng Har (female) is old enough to be the wife of Saw Kim Huat but too young to be advertised in the Nanyang Siang Pau daily. These gaps in the prosecution case are quite disturbing.

Fourthly, the three chinese individuals can be said to be witnesses essential to the unfolding of the narrative upon which the prosecution is based and thus they should rightly be called. Lord Roche in the case of *Seneviratne v. R* [1936] 3 All ER 35 in particular at page 49 said:

> Witnesses essential to the unfolding of the narrative upon which the prosecution case is based must, of course, be called by the prosecution whether in the result the effect of their testimony is for or against the prosecution.

Salleh Abas LP in *Abdullah Zawawi v. Public Prosecutor* [1985] 2 MLJ 15 SC in particular at page 19 had this to say:

> In the circumstances of this case, the Assistant Manager should have been called to explain those three matters and the office-boy to explain about the windows. It may well be that if these two were called, their evidence would be favourable to the prosecution, but unless they had given their testimonies, the court could not be sure and should not indulge in conjectures and possibilities.

At the end of the prosecution's case, the prosecution offered the three chinese individuals Saw Chin Huat, Saw Kim Heoh and Ooi Eng Har who were absent to the defence. This move cannot cure the inherent defect in the prosecution's case.

It is reasonable to assume that police statements would have been taken from them (the three chinese individuals) and that they would ordinarily have been called to give evidence. They were however not called. Nevertheless, it must be stressed that the decision whether to call or not to call a witness including a witness from whom a statement has been taken is always the right of the prosecution (see *Public Prosecutor v. Lee Pak* [1937] MLJ 265, *Daniel v. Public Prosecutor* [1956] MLJ 186, *Mohamed Kassim v. R* [1956] MLJ 212, *A. Gabriel & Anor v. Public Prosecutor* [1957] MLJ 83, *Khoon Chye Hin v. Public Prosecutor* [1961] MLJ 105 CA, *Samsudin v. Public Prosecutor* [1962] MLJ 405 and *Abdullah Zawawi v. PP* (*supra*)). In so far as this Court is concerned, its duty is essentially to decide whether on the evidence before it the prosecution has proved its case, and if there are unsatisfactory features in the prosecution case to determine whether, in the light of such features, the prosecution case fell short of proof beyond reasonable doubt (*Munusamy v. PP* (*supra*) and *Abdullah Zawawi v. PP* (*supra*)).

Now, s. 114 of the Evidence Act 1950 is not mandatory but gives the Court a discretion. It says that the Court may presume the existence of the facts which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business and it furnishes a number of illustrations of the circumstances in which this discretion may be exercised.

One of these illustrations is (g) which reads as follows:

> The Court may presume -
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

At the outset it is essential to appreciate the scope of section 114(g) lest it be carried too far outside its limit. It is useful to be reminded that adverse inference under that illusatration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence.

Thus, it may be drawn from withholding not just any document, but material document by a party in his possession. For that matter it can also be drawn for non-production of not just any witness but an important and material witness to the case.

Indeed the three chinese individuals can be construed to be important and material witnesses to the case. It can safely be inferred (and this is a reasonable inference) that if they had been called, they would have given evidence adverse against the prosecution (see *Tan Puan Chee v. PP* [1981] 2 MLJ 282). Further, as stated earlier there was no reasonable explanation given for the failure to produce these important and material witnesses (see *Murugan v. Lew Chu Cheong* [1980] 2 MLJ 139 F.C. and *Abdul Jalil bin Abdul Satar v. PP* [1991] 2 MLJ 194 SC). Accordingly, I invoke s. 114(g) of the Evidence Act 1950 against the prosecution.

Fifthly, there was evidence that the government chemist (PW2) received the exhibits, namely, the package marked 'S' and sealed with "Polis Di Raja Malaysia '92" on 27 July 1988 at 3.00 p.m. in his office from Chief Inspector Shaharani. It was only on 11 November 1988 at 12.15 p.m. that the government chemist returned the exhibits to the said Chief Inspector Shaharani. The exhibits, in particular, the cannabis were in the possession of the government chemist for approximately 3 months and 14 days. No evidence was led by the prosecution as to how the government chemist handled the cannabis in his office. Surely if the prosecution could establish by a chain of evidence in regard to the movement of the exhibits while it was in the hands of the police and the customs, the same should also be done by the prosecution to show the movement of the cannabis while it was with the chemistry department. It must be borne in mind that the cannabis in the two chinese newspaper packages (exhibits P18, P18A, P19 and P19A) were in loose forms and by its very nature could not be marked specifically. It could very well be mixed up with other cannabis kept in the chemistry department unless the prosecution can show positively that appropriate steps were taken by the government chemist to ensure its safe custody. Likewise the same argument applies equally to the cannabis found in the steamer, wherein they were removed from the rolls by the government chemist for analysis. And once removed from the rolls, the cannabis were in loose forms (exhibits P21D,

P22C and P23C) which could also be mixed up with other cannabis kept by the government chemist.

Throughout his evidence, the government chemist was not asked as to who had kept the cannabis, where was it kept and whether that place wherein he kept the cannabis was constantly under lock and key. And finally one vital question may be asked: did the government chemist return to Chief Inspector Shaharani the very same exhibits (cannabis) he received from Chief Inspector Shaharani? The strict proof imposed on the police and the customs in regard to the identity of the exhibits from the moment it was seized to the time it was brought to the Court, should likewise be imposed on the chemistry department.

The chain of evidence relating to the identity of the drugs produced in court should contain no serious break. This has been stated repeatedly by the Supreme Court. As I see it each person constituting a link in that chain should be required to speak in evidence to the safe custody of the drugs whilst in that person's possession.

In *Teoh Hoe Chye v. Public Prosecutor* [1987] 1 MLJ 220 SC especially at page 229, his Lordship Abdul Hamid CJ Malaya (as he then was) said:

> We would observe at this point that the law is clear in that 'it is unnecessary to call evidence to ensure there is no break in the chain of evidence' (*Su Ah Ping v. PP* [1980] 1 MLJ 75). But where a doubt as to the identity of an exhibit arises, a failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution case.

In *Mohd Osman bin Pawan v. Public Prosecutor* [1989] 2 MLJ 110 especially at page 112, his Lordship Mohamed Yusoff SCJ (as he then was) said:

> It was also submitted that the evidence shows the shoddy manner the exhibits were kept in the customs strong room.
>
> We feel that the point was correctly taken by the appellant. In a serious case, such as this, it is pertinent to emphasize again that investigation officers should not treat the custody of exhibits lightly so as to leave a gap in the chain of evidence relating to the exhibits before their production to the court.

In *Abdullah bin Yaacob v. Pendakwa Raya* [1991] 2 MLJ 235 especially at page 237, his Lordship Hashim Yeop A. Sani C.J. Malaya (as he then was) said:

> Tetapi fakta kes berbeza di antara satu dengan lain dan kewajipan pendakwa dalam satu-satu kes ialah untuk membuktikan kes itu dengan tidak menimbulkan apa-apa keraguan yang munasabah kepada Mahkamah. Kes hendaklah dibuktikan dengan kemas tanpa keraguan atau persoalan yang boleh dibangkitkan berkenaan barang kes. Lihat juga *Teoh Hoe Chye v. PP* [1987] 1 MLJ 220 SC di m.s. 229. Janganlah ada didapati talian keterangan yang putus sehingga membawa kepada keraguan berkenaan dengan barang kes.

In *Shamsuddin bin Hassan & Anor v. PP* [1991] 3 MLJ 314 his Lordship Harun Hashim SCJ held that there were serious gaps in the chain of evidence with regard to the drugs thrown out of the car and the exhibits produced in Court. His Lordship further held that on this ground alone, the appellants should not have been called up to enter in their defence.

Likewise in the instant case the recital of the facts would clearly show serious gaps in the chain of evidence with regard to the drugs seized in the said house and the exhibits produced in court. I rule that on this score alone, the Accused should not be called to enter his defence and consequently should be acquitted and discharged.

Sixthly, in a serious case such as this, the adducing of evidence as to the exhibits should be done with circumspection. There is one aspect of the evidence adduced by the prosecution which called for comment. It is this. The evidence of Chief Inspector Shaharani was at variance with that of Inspector Syed Talib. While Inspector Syed Talib stated that he handed all the exhibits to Chief Inspector Shaharani in the latter's office yet Chief Inspector Shaharani did not support him on this score. Chief Inspector Shaharani categorically stated that it was in Inspector Syed Talib's office that the exhibits were handed to him (Chief Inspector Shaharani).

Another piece of evidence deserving comment is this. Inspector Syed Talib maintained throughout the trial and was adamant that in the said house there were no one else apart from the Accused and the three chinese individuals. Whereas Corporal Azmi, under cross-examination admitted that there were children in the said house, at least more than one child. Corporal Azmi also mentioned that before the police party proceeded to the Taiping police station

from the said house, there was one chinese lady that came to the said house and took care of the children. The evidence of Corporal Azmi in regard to the children being present in the said house at the time of the raid found support in photographs P6E and P6F. In photograph P6E, a baby's cradle can be seen. In both photographs P6E and P6F baby's tinned foodstuffs can also be seen.

Having scrutinised the testimonies of Chief Inspector Shaharani, Inspector Syed Talib and Corporal Azmi which were at variance, it could not be said that the prosecution has established a *prima facie* case against the Accused.

Seventhly, no evidence was led that fingerprints were lifted from the newspaper packages that were used to wrap up the drugs (exhibits P18 and P19), the plastic bag (exhibit P20), the pieces of chinese newspaper that were used to wrap up the drugs (exhibits P21B, P22A and P23A). As I have said in the case of *Public Prosecutor v. Tay Bee Seng* (Perak Criminal Trial No: 58-1-92 (87)) (see [1993] 1 CLJ 526), it is not time consuming to lift fingerprints and its importance can never be doubted (see *Public Prosecutor v. Lim Eng Chye* [1978] 1 MLJ 200 and *PP v. Kang Choo Heng & Anor*. [1991] 3 CLJ 2574).

Lastly, the investigations conducted by Chief Inspector Shaharani did not show that fingernail clippings or hand swabs were taken from the Accused, vital evidence that would link the Accused with the drugs (see *PP v. Forster Frank Edald Heinrich* [1988] 2 MLJ 594 & *PP v. Lim Ah Bek (f)* [1989] 2 CLJ 1090).

It would not be fair to penalize and the Accused should not be penalized for lack of ingenuity in police investigations depriving him of the time - honoured benefit of doubt. The scattered pieces of evidence create lurking doubts in my mind on the thoroughness of the police investigations. Put in another way, the inherent defects taken cumulatively, create grave doubts in my mind. Whatever doubt the Court had must be given to the Accused.

In regard to the search list, I did not place too much emphasis on it and its reception has not influenced me in coming to a decision whether the prosecution has proved its case beyond reasonable doubt (see *PP v. Lee Soon Sian* [1993] 2 CLJ Perak Criminal Trial No. 58-7-92 (90).

In the instant case very likely one or the other or all of them must have committed the offence, but there was no evidence to this effect and although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and that the law must be maintained that the prosecution should prove its case beyond reasonable doubt.

I have at great length drawn inferences favourable to the Accused from a set of facts available to the Court (this is a permissible exercise: see *Tai Chai Keh v. PP* [1948-49] MLJ Supp 105). In the circumstances, on all the evidence adduced at the close of the prosecution's case, the Court found that the prosecution had failed to established a *prima facie* case which, if unrebutted, would warrant the conviction of the Accused. The court accordingly found the Accused not guilty, acquitted and discharged him without calling for his defence.